

05 - 24

MEMORANDUM OF AGREEMENT

BETWEEN

THE UNITED STATES ARMY CORPS OF ENGINEERS

OF THE UNITED STATES OF AMERICA

AND THE

MINISTRY OF TRANSPORT, PUBLIC WORKS AND WATER MANAGEMENT

DIRECTORATE GENERAL 'RIKSWATERSTAAT'

OF THE NETHERLANDS

FOR

INFORMATION EXCHANGE AND

RESEARCH, DEVELOPMENT, TESTING, AND EVALUATION PROJECTS

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PREAMBLE

The United States (U.S.) Army Corps of Engineers (hereinafter referred to as "USACE") and the Netherlands (NL) Ministry of Transport, Public Works and Water Management (hereinafter referred to as "RWS"), hereinafter referred to as the "Parties":

Having a common interest in flood control and water resources management;

Recognizing the benefits of mutual cooperation and information exchange in the fields of flood control and water resources management;

Desiring to promote and enhance public safety and community welfare by fostering research, development and improvement of flood control and water resources management, and to promote, encourage and advance a system of safer, more economical, efficient and environmentally sound flood control and water resources management through cooperation in Research, Development, Test, and Evaluation Projects;

Have agreed as follows:

ARTICLE I

DEFINITIONS

For the purposes of this Agreement and any of its specific Project Agreements (PAs), the following definitions shall apply:

Administrative Contract	Any mutually binding legal relationship under relevant national administrative or civil law that obligates all parties to contribute to a specific project that belongs to the public task of either Party.
Classified Information	Official information that requires protection in the interests of national security and is so designated by the application of a security classification marking. It may be in oral, visual, magnetic, or documentary form, or in the form of equipment or technology.
Contract	Any mutually binding legal relationship under the relevant national law that obligates a Contractor to furnish supplies or services, and obligates one or both of the Parties to pay for them.
Contracting	The obtaining of supplies or services by Contract from sources outside the government organizations of the Parties. Contracting includes description (but not determination) of supplies and services required, solicitation and selection of sources, preparation and award of Contracts, and all phases of Contract administration.
Contracting Agency	The entity within the government organization of a Party that has authority to enter into, administer, and/or terminate Contracts.
Contracting Officer	A person representing a Contracting Agency of a Party who has the authority to enter into, administer, and/or terminate Contracts.
Contractor	Any entity awarded a Contract by a Party's Contracting Agency.
Controlled Unclassified Information	Unclassified information to which access or distribution limitations have been applied in accordance with applicable national laws or regulations. Whether the information is provided or generated under this Agreement, the information shall be marked to identify its "in confidence" nature.

Cooperative Project Personnel (CPP)	Military members or civilian employees of a Party assigned to the other Party's facilities who perform managerial, scientific, engineering, technical, administrative, logistics, financial, planning, or other functions in furtherance of a Project Agreement.
Civil Works Purposes	Manufacture or other use in furtherance of the public mission of flood control or water resources management by any Party.
Financial Costs	Project Agreement costs met with monetary contributions.
Non-Financial Costs	Project Agreement costs met with non-monetary contributions.
Patent	<i>Legal protection of the right to exclude others from making, using, or selling an invention. The term refers to any and all patents including, but not limited to, patents of implementation, improvement, or addition, petty patents, utility models, appearance design Patents, registered designs, and inventor certificates or like statutory protections as well as divisions, reissues, continuations, renewals, and extensions of any of these.</i>
Project	Specific collaborative activity described in a Project Agreement.
Project Agreement (PA)	An implementing agreement, added after the Agreement has been in force, that specifically details the terms of collaboration on a specific Project.
Project Background Information	Information not generated in the performance of a specific Project Agreement.
Project Foreground Information	<i>Information generated in the performance of a specific Project Agreement.</i>
Project Information	Any information provided to, generated in, or used in the performance of a PA regardless of form or type, including, but not limited to, experimental and test data; specifications; design process; inventions or discoveries, whether or not patentable; technical writings; sound recordings; magnetic records; computer software documentation, both programmatic and data base; computer memory printouts or data retained in computer memory; works of a technical nature; and any other relevant technical data in whatever form presented and whether or not subject to copyright, Patent, or other legal protection.

Project Invention	Any invention or discovery formulated or made (conceived or first actually reduced to practice) in the course of work performed under a PA. The term "first actually reduced to practice" means the first demonstration sufficient to establish to one skilled in the art to which the invention pertains, of the operability of an invention for its intended purpose and in its intended environment..
Technical Information	Any information provided under this Agreement outside of the scope of a PA, regardless of form or type, including, but not limited to, experimental and test data; specifications; design process; inventions or discoveries, whether or not patentable; technical writings; sound recordings; magnetic records; computer software documentation, both <i>programmatic and data base</i> ; <i>computer memory printouts</i> or data retained in computer memory, works of a technical nature; and any other relevant technical data in whatever form presented and whether or not subject to copyright, Patent, or other legal protection.
Third Party	A government other than the government of a Party and any person or other entity whose government is not the government of a Party.

ARTICLE II

OBJECTIVES

2.1 The objective of this Agreement is to define and establish the general terms and conditions which shall apply to the initiation, conduct, and management of projects detailed in separate PAs between representatives authorized in accordance with national procedures of the Parties. These PAs shall be entered into pursuant to this Agreement and shall incorporate by reference the terms of this Agreement.

2.2 Detailed terms and conditions of each individual PA shall be consistent with this Agreement. Each PA shall include specific provisions concerning the objectives, scope of work, sharing of work, management structure and financial agreements for the applicable PA in accordance with the format set forth in Annex A, to the extent practical.

2.3 In addition to mutual cooperation that may take place in the form of PAs, this Agreement shall also set forth the terms and conditions governing the exchange of information related to flood control and water resources development between the Parties outside of the scope of a PA.

ARTICLE III

SCOPE OF WORK

3.1 The scope of work for this Agreement shall encompass collaboration in research, development, testing, and evaluation potentially leading to new or improved Civil Works capability.

3.2 The scope of work for this Agreement also includes mutual cooperation in the form of the exchange of Technical Information outside of the scope of any PA.

3.3 PAs and information exchange under this Agreement may encompass one or more of the following activities: Flood control and water resources management policies; Flood plain management; Dredging; Navigation; Configuration of systems for flood control and water control management using advanced technologies; River engineering technologies; Water Policy issues; Preservation of river environments and wetlands and habitat evaluation; Economic evaluation of the policies for flood control, water resources management, environmental protection and restoration, and recreation; Salt water intrusion; Coastal management planning; Consensus building in the community; Flood fighting; River basins level management; Communication of risks with the public and media; Ecological design; Sedimentation; Environmental engineering; Flood plain modeling; Levee design; Levee protection; Disposal of contaminated material; Coastal erosion; Public Water policy; Dune restoration; and Beach nourishment.

3.4 This Agreement does not preclude entering into any other agreement in the areas of research and development or information exchange.

ARTICLE IV

MANAGEMENT (ORGANIZATION AND RESPONSIBILITY)

4.1 The Chief of Engineers, U.S. Army Corps of Engineers or his/her successor in the event of reorganization is designated U.S. Agreement Director (U.S. AD). The Director General of Rijkswaterstaat or his/her successor in the event of reorganization is designated the Netherlands Agreement Director (NL AD). The ADs shall be responsible for:

- 4.1.1 monitoring implementation of this Agreement and exercising executive-level oversight;
- 4.1.2 monitoring the overall use and effectiveness of the Agreement;
- 4.1.3 recommending amendments to this Agreement to the Parties; and
- 4.1.4 resolving issues brought forth by the Management Agents (MAs).

4.2 The USACE MA, or his/her designee, is designated the U.S. MA for this Agreement. The RWS MA, or his/her designee, is designated the NL MA for this Agreement. The MAs shall be responsible for:

- 4.2.1 entering into PAs in accordance with this Agreement and national policies and procedures;
- 4.2.2 establishing a management structure for each PA considering its scope;
- 4.2.3 appointing Project Officers (POs) for any PA;
- 4.2.4 giving administrative direction to POs appointed to their projects;
- 4.2.5 resolving issues brought forth by the POs;
- 4.2.6 acting as the national focal point for the exchange of Technical Information under this Agreement as set forth in Article IX (Channels of Communication and Visits), and maintaining lists of information so exchanged;
- 4.2.7 maintaining oversight of the security aspects of this Agreement in accordance with Article VIII (Controlled Unclassified Information) and Article X (Security); and
- 4.2.8 any other unique responsibilities required for the management of this Agreement.

4.3 POs shall have primary responsibility for effective implementation, efficient management and direction of their assigned PA. The POs shall also be responsible for:

- 4.3.1 monitoring overall PA implementation, including technical, cost, and schedule performance against requirements;
- 4.3.2 reporting status and activity of assigned PAs on an annual basis to the MAs and ADs;
- 4.3.3 maintaining oversight of the security aspects of assigned projects; and
- 4.3.4 approving assignment of personnel working on a project at the other Party's facilities in accordance with the provisions set out in Appendix (1) to Annex A.

4.4 In accordance with the terms of an approved PA and with the provisions set out in Appendix (1) to Annex A of this Agreement attached to the approved PA, a Party may assign Cooperative Project Personnel (CPP) to other Party's facilities to assist in the implementation of an approved PA.

4.5 The MAs and POs shall meet as required to resolve disputes concerning the implementation of PAs or other exchange of information, alternately in the U.S. and the NL. The Chairman for each meeting shall be the senior official of the host Party. During such meetings, all decisions shall be made unanimously with each Party having only one vote to be exercised by its MA. In the event that the Parties are unable to reach a timely decision on an issue, each Party shall refer the issue to its higher authority for resolution. In the meantime, the approved PA shall continue to be implemented without interruption under the direction of the POs while the issue is being resolved by the higher authority.

ARTICLE V
FINANCIAL PROVISIONS

5.1 Each PA shall require the equitable sharing between the Parties of the full Financial and Non-financial Costs of each PA, including overhead costs, and ensure that each Party shall receive an equitable share of the results of each PA.

5.2 The financial and non-financial agreements for a PA, including the total cost of the PA and each Party's share of the total cost, shall be included in the PA.

5.3 Both Parties shall perform, or have performed, their tasks and shall use their best efforts to perform the tasks within the cost estimates specified in each PA. Both Parties shall bear the full costs they incur for performing, managing, and administering their own activities under this Agreement and participation in each PA.

5.4 The cost of CPP assigned to the other Party's facilities shall be borne as follows:

5.4.1 The parent Party of the CPP shall bear the following CPP-related costs:

5.4.1.1 All pay and allowances;

5.4.1.2 Transportation of the CPP, the CPP's dependents, and their personal property to the place of assignment in the host Party's nation prior to the CPP's commencement of a tour of duty in the field activity, and return transportation of the foregoing from the place of assignment in the host Party's nation upon completion or termination of the tour of duty;

5.4.1.3 Compensation for loss of, or damage to, the personal property of CPP or the CPP's dependents, subject to the parent Party's laws and regulations; and

5.4.1.4 Preparation and shipment of remains and funeral expenses in the event of the death of the CPP or the CPP's dependents.

5.4.2 The host Party shall bear the assignment-related administrative and support costs such as CPP costs of travel incurred in support of a PA, CPP-related training, office space, security services, information technology services, communications services and supplies.

5.5 A Party shall promptly notify the other Party if available funds will not be adequate to fulfill its obligations as agreed under a PA, or if it appears that the cost estimates in a PA will be

exceeded, and both Parties shall immediately consult with a view toward continuation on a modified basis.

5.6 Each Party shall be responsible for the audit of its activities or its Contractors' activities pursuant to a PA. A Party's audits shall be in accordance with its own national practices.

ARTICLE VI

CONTRACTUAL PROVISIONS

6.1 If either Party determines that Contracting is necessary to fulfill its obligations under the scope of work of a PA, that Party shall contract in accordance with its respective national laws, regulations and procedures.

6.2 When one Party individually contracts to carry out a task under a PA, it shall be solely responsible for its own contracting, and the other Party shall not be subject to any liability arising from such Contracts.

6.3 For all Contracting activities performed by either Party, each Party's Contracting Agency shall negotiate to obtain the rights to use and disclose Project Information required by Article VII (Disclosure and Use of Technical and Project Information). Each Party's Contracting Agency shall insert into its prospective Contracts (and require its Contractors to insert in subcontracts) suitable provisions to satisfy the requirements of this Agreement, including Article VII (Disclosure and Use of Technical and Project Information), Article VIII (Controlled Unclassified Information), Article X (Security), and Article XI (Third Party Sales and Transfers). During the Contracting process, each Party's Contracting Officer shall advise prospective Contractors of their obligation to notify the Contracting Agency immediately if they are subject to any license or agreement that will restrict that Party's freedom to disclose Project Information or permit its use. The Contracting Officer shall also advise prospective Contractors to employ their best efforts not to enter into any new agreement or arrangement that will result in such restrictions.

6.4 In the event a Party's Contracting Agency is unable to secure adequate rights to use and disclose Project Information as required by Article VII (Disclosure and Use of Technical and Project Information), or is notified by Contractors or prospective Contractors of any restrictions on the disclosure and use of Project Information, that Party's PO shall notify the other Party's PO of the restriction(s).

ARTICLE VII

DISCLOSURE AND USE OF TECHNICAL AND PROJECT INFORMATION

7.1 Both Parties recognize that successful mutual cooperation depends on full and prompt exchange of information necessary for carrying out each PA. The nature and amount of Project Information to be shared shall be consistent with the objectives and scope stated in the PAs to this Agreement. The Parties further recognize that successful collaboration depends on the efficient exchange on Technical Information between the technical experts of each Party as outlined in Article IX (Channels of Communication and Visits).

7.2 Government Project Foreground Information

7.2.1 Disclosure: Project Foreground Information generated in whole or in part by a Party's employees shall be disclosed without charge to both Parties.

7.2.2 Use: Each Party may use all Government Project Foreground Information without charge for its Civil Works Purposes. The Party generating Government Project Foreground Information shall retain its rights of use thereto. Any sale or other transfer to a Third Party shall be subject to the provisions of Article XI (Third Party Sales and Transfers) of this Agreement.

7.3 Government Project Background Information

7.3.1 Disclosure: Each Party, upon request, shall disclose to the other Party any relevant Government Project Background Information generated by its employees, provided that:

7.3.1.1 such Government Project Background Information is necessary to or useful in a specific PA. The Party in possession of the information shall determine whether it is "necessary to" or "useful in" the specific PA;

7.3.1.2 such Government Project Background Information may be made available without incurring liability to holders of proprietary rights; and

7.3.1.3 disclosure is consistent with national disclosure policies and regulations of the furnishing Party.

7.3.2 Use: Government Project Background Information disclosed by one Party to the other may be used without charge by the other Party only for the project purposes of the particular PA for which it is necessary or useful. The furnishing

Party shall retain its rights with respect to such Government Project Background Information.

7.4 Contractor Project Foreground Information

7.4.1 Disclosure: Project Foreground Information generated and delivered by Contractors shall be disclosed without charge to both Parties.

7.4.2 Use: Each Party may use, without charge, for its Civil Works Purposes all Contractor Project Foreground Information generated and delivered by Contractors of the other Party. The Party whose Contractors generate and deliver Contractor Project Foreground Information shall retain its rights of use thereto in accordance with the applicable Contract(s). Any sale or other transfer to a Third Party of Contractor Project Foreground Information, shall be subject to the provisions of Article XI (Third Party Sales and Transfers) of this Agreement.

7.5 Contractor Project Background Information

7.5.1 Disclosure: Any Contractor Project Background Information, (including information subject to proprietary rights) generated and delivered by Contractors shall be made available to the other Party provided the following conditions are met:

7.5.1.1 such Contractor Project Background Information is necessary to or useful in a specific PA. The Party in possession of the information shall determine whether it is "necessary to" or "useful in" the specific PA;

7.5.1.2 such Contractor Project Background Information may be made available without incurring liability to holders of proprietary rights; and

7.5.1.3 disclosure is consistent with national disclosure policies and regulations of the furnishing Party.

7.5.2 Use: Contractor Project Background Information furnished by one Party's Contractors and disclosed to the other Party may be used without charge by the other Party only for the project purposes of the particular PA for which it is necessary or useful, and it may also be subject to further restrictions by holders of proprietary rights. The furnishing Party shall retain its rights with respect to such Contractor Project Background Information.

7.6 Alternative uses of Project Information

7.6.1 The prior written consent of each Party's Government shall be required for the use of any Project Foreground Information for purposes other than those provided for in this Agreement or any PA under it.

7.6.2 Any Project Background Information provided by one Party shall be used by the other Party only for the purposes set forth in this Agreement, unless otherwise consented to in writing by the providing Party's Government.

7.7 Proprietary Project Information

All Project Information subject to proprietary interests shall be identified and marked, and it shall be handled in accordance with Article VIII (Controlled Unclassified Information).

7.8 Technical Information

7.8.1 Technical Information shall not be used by the receiving Party for any purpose other than the purpose for which it was furnished without the specific prior written consent of the furnishing Party. The receiving Party shall not disclose Technical Information exchanged under this Agreement to Contractors or any other persons without the specific prior written consent of the furnishing Party.

7.8.2 The receiving Party shall ensure that Contractors or any other persons to whom it discloses Technical Information received under this Agreement are placed under a legally binding obligation to comply with the provisions of this Agreement with respect to the use, control, and protection of such information.

7.8.3 No transfer of ownership of Technical Information shall take place under this Agreement. Technical Information shall remain the property of the originating Party or its Contractors.

7.8.4 Technical Information shall be exchanged only when it may be done:

7.8.4.1 Without incurring liability to holders of proprietary rights; and

7.8.4.2 Where disclosure is consistent with national disclosure policies and regulations of the furnishing Party.

7.8.5 All Technical Information subject to proprietary interests shall be identified, marked, and handled in accordance with Article VIII (Controlled Unclassified Information).

7.8.6 Technical Information that is exchanged under this Agreement shall be disclosed to Third Parties by the receiving Party only in accordance with Article XI (Third Party Transfers).

7.9. Patents

- 7.9.1 Where a Party owns title to a Project Invention, or has the right to receive title to a Project Invention, that Party shall consult with the other Party regarding the filing of a Patent application for such Project Invention. The Party that has or receives title to such Project Invention shall, in other countries, file, cause to be filed, or provide the other Party with the opportunity to file on behalf of the Party holding title, or its Contractors, as appropriate, Patent applications covering that Project Invention. If a Party having filed or caused to be filed a Patent application decides to stop prosecution of the application, that Party shall notify the other Party of that decision and permit the other Party to continue the prosecution.
- 7.9.2 The other Party shall be furnished with copies of Patent applications filed and Patents granted with regard to Project Inventions.
- 7.9.3 The other Party shall acquire a non-exclusive, irrevocable, royalty-free license to practice or have practiced, by or on behalf of the Party, throughout the world for Civil Works Purposes, any Project Invention.
- 7.9.4 Each Party shall notify the other Party of any Patent infringement claims made in its territory arising in the course of work performed under any PA of this Agreement. Insofar as possible, the other Party shall provide information available to it that may assist in defending the claim. Each Party shall be responsible for handling all Patent infringement claims made in its territory, and shall consult with the other Party during the handling, and prior to any settlement, of such claims. The Parties shall share the costs of resolving Patent infringement claims in a manner they determine to be fair at the time the Patent infringement claim is resolved. The Parties shall, in accordance with their national laws and practices, give their authorization and consent for all use and manufacture in the course of work performed under the project of any invention covered by a Patent issued by their respective countries.